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PACIFIC BELL TELEPHONE COMPANY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

PACIFIC BELL TELEPHONE COMPANY,

Defendant.

CASE NO. 2:21-cv-00073-JDP

**DECLARATION OF JON DAVID KELLEY
IN SUPPORT OF DEFENDANT PACIFIC
BELL'S OPPOSITION TO BTB-MTS'S
MOTION TO SHIFT COSTS**

Judge: Hon. Jeremy D. Peterson
Date: January 9, 2025
Time: 10:00 a.m.
Courtroom: 9

Action Filed: January 14, 2021
Trial Date: None

I, Jon David Kelley, hereby declare as follows:

1. I am a partner at the law firm of Kirkland & Ellis LLP and counsel for Defendant Pacific Bell Telephone Company (“Pacific Bell”) in the above-captioned litigation. I submit this declaration in support of Pacific Bell’s Opposition to BTB-MTS’s Motion to Shift Costs. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

2. Attached as **Exhibit A** is a true copy of email correspondence between Seth Jones and Mollie Hurt on August 6, 2020, produced by Tahoe Resource Conservation District as TRCD00000030.

3. Attached as **Exhibit B** is a true copy of email correspondence between Kirk Boyd, Seth Jones, and Monique Rydel-Fortner on July 21, 2021, produced by BTB/MTS as BTBMTS0013103.

4. Attached as **Exhibit C** is a true copy of email correspondence between Robert Mooney, John Dietler, Seth Jones, Lindsay Teunis, and Will Norman between December 21, 2021 and February 28, 2022, produced by BTB/MTS as BTBMTS0013991.

5. Attached as **Exhibit D** is a true copy of email correspondence between Joseph Fluder, Robert Kroeger, Seth Jones, Monique Rydel-Fortner, Shalini Ramachandran, and Susan Pulliam between July 9, 2023, and July 19, 2023, produced by BTB/MTS as BTBMTS0018455.

6. Attached as **Exhibit E** is a true copy of an August 26, 2022 article published by the Tahoe Daily Tribune titled, “Nonprofit thrust into spotlight after finding abandoned cable in Lake Tahoe,” and available at <https://www.tahodailytribune.com/news/nonprofit-thrust-into-spotlight-after-finding-abandoned-cable-in-lake-tahoe/>.

7. Attached as **Exhibit F** is a true copy of the letter entitled, “Re: Lake Tahoe Communications Cable Removal,” from Seth Jones to Torrey Denoo on January 18, 2022, produced by BTB/MTS as BTBMTS0015676.

8. Attached as **Exhibit G** is a true copy of the About Us webpage from the Below the Blue website, captured on November 20, 2024.

1 9. Attached as **Exhibit H** is a true copy of email correspondence between Seth Jones,
2 Torrey Denoo, Evan Dreyer, and Monique Rydel-Fortner between January 8, 2021, and January 17,
3 2021, produced by BTB/MTS as BTBMTS0006841.

4 10. Attached as **Exhibit I** is a true copy of email correspondence between Seth Jones,
5 Torrey Denoo, Monique Rydel-Fortner, Evan Dreyer, and Kirk Boyd between January 20, 2021, and
6 November 16, 2021, produced by BTB/MTS as BTBMTS0006859

7 11. After the Court granted Pacific Bell's second motion to compel BTB/MTS on January
8 25, 2024, BTB/MTS began producing documents responsive to Pacific Bell's subpoena.

9 12. Once BTB/MTS's production was complete, counsel for BTB/MTS demanded that
10 Pacific Bell pay all fees associated with its alleged "compliance" with Pacific Bell's subpoena.

11 13. Attached as **Exhibit J** is a true copy of email correspondence between myself and
12 counsel for BTB/MTS between October 3 and October 21, 2024.

13 14. On October 22, 2024, I personally met and conferred with counsel for BTB/MTS,
14 together with my partner, Mark Nomellini, so Pacific Bell could understand who paid the costs and
15 fees at issue. During this meet and confer, counsel for BTB/MTS admitted that all of the fees incurred
16 by Mr. Koltun had been paid by Dow Jones. Mr. Koltun also stated that he expected that if BTB/MTS
17 did not prevail on its Motion to Shift Costs, Dow Jones would pay any remaining amounts owed to
18 Alvarez & Marsal.

19 15. Pacific Bell has served 18 other subpoenas on 18 non-parties in this case, excluding
20 MTS, BTB, Jones, and Fortner. None of these other subpoenaed required Pacific Bell to file a motion
21 to compel to enforce their compliance.

22 16. Plaintiff named Seth Jones, Monique Fortner, and Marine Taxonomic Services as
23 witnesses with "discoverable information that support Plaintiff's claims" in its September 28, 2023
24 Initial Disclosures, a true copy of which is attached as **Exhibit K**.

25 17. In 2023, Dow Jones posted annual net income of \$660 million, as shown in its 2023
26 Annual Report, relevant pages of which I attach as **Exhibit L**.

27 I declare under penalty of perjury under the laws of the United States that the foregoing is true
28 and correct.

Executed November 20, 2024, in Dallas, Texas.

/s/ Jon David Kelley

Jon David Kelley